

110TH CONGRESS
1ST SESSION

H. R. 2529

To establish efficiency resource standards for retail electricity and natural gas distributors, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2007

Mr. MARKEY introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To establish efficiency resource standards for retail electricity and natural gas distributors, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. RETAIL ELECTRIC AND GAS UTILITY EFFI-**
4 **CIENCY POLICIES.**

5 (a) IN GENERAL.—The Public Utility Regulatory
6 Policies Act of 1978 is amended by adding the following
7 after section 609:

1 **“SEC. 610. EFFICIENCY RESOURCE STANDARDS FOR RE-**
2 **TAIL ELECTRICITY AND NATURAL GAS DIS-**
3 **TRIBUTORS.**

4 “(a) DEFINITIONS.—In this section:

5 “(1) BASE QUANTITY.—The term ‘base quan-
6 tity’, with respect to a retail electricity or natural
7 gas distributor, means the total quantity of electric
8 energy or natural gas delivered by the retail elec-
9 tricity or natural gas distributor to retail customers
10 during the most recent calendar year for which in-
11 formation is available.

12 “(2) COMBINED HEAT AND POWER SYSTEM.—
13 The terms ‘combined heat and power system’ and
14 ‘CHP system’ mean a system that—

15 “(A) uses the same energy source for the
16 simultaneous or sequential generation of elec-
17 trical power, mechanical power, or both, in com-
18 bination with the generation of steam or other
19 forms of useful thermal energy (including heat-
20 ing and cooling applications);

21 “(B) produces at least 20 percent of its
22 total useful energy in the form of thermal en-
23 ergy, and at least 15 percent of its total useful
24 energy in the form of electrical or mechanical
25 power (or a combination thereof);

1 “(C) except for systems designed for oper-
2 ation on cellulosic biomass fuel, has a marginal
3 net heat rate of no more than 7,500 Btu/kWh,
4 calculated on a higher heating value basis;

5 “(D) is designed for continuous operation;
6 and

7 “(E) if generating electricity provides such
8 electricity primarily for use for a facility or
9 group of facilities located near the point where
10 the electricity is generated, and from which net
11 wholesale sales of electricity are not in excess of
12 50 percent of total annual generation.

13 “(3) CUSTOMER FACILITY.—The term ‘cus-
14 tomer facility’ means an end-use consumer of elec-
15 tricity or natural gas served by a retail electricity or
16 natural gas distributor.

17 “(4) DEEMED SAVINGS.—The term ‘deemed
18 savings’ means an estimate of the average per unit
19 savings from installation of specific common energy
20 efficiency measures. Deemed savings estimates shall
21 be based on field studies or billing analyses of sav-
22 ings at a sample of sites where the specific measure
23 is installed.

24 “(5) ELECTRIC AND NATURAL GAS SAVINGS
25 CORPORATION.—The term ‘Electric and Natural Gas

1 Savings Corporation’ means the corporation certified
2 pursuant to subsection (d)(7)(C).

3 “(6) ELECTRICITY.—(A) The term ‘electricity
4 savings’ means any of the following:

5 “(i) Reductions in end-use electricity con-
6 sumption achieved by a customer facility rel-
7 ative to—

8 “(I) consumption at the same facility
9 in a base year, as defined in rules issued
10 by the Secretary;

11 “(II) in the case of replacement of
12 equipment at the end of its life or of new
13 equipment that does not replace existing
14 equipment, consumption of new equipment
15 of average efficiency, as defined in rules
16 issued by the Secretary; or

17 “(III) in the case of a new facility,
18 consumption at a reference facility, as de-
19 fined in rules issued by the Secretary.

20 “(ii) Reductions in distribution system
21 losses of electricity achieved by a retail elec-
22 tricity distributor relative to losses attributable
23 to new or replacement distribution system
24 equipment of average efficiency, as defined in
25 rules issued by the Secretary.

1 “(iii) Any combination of the foregoing.

2 “(B) The reductions referred to in subpara-
3 graph (A) may be due to—

4 “(i) energy efficiency measures, including
5 demand response measures that result in im-
6 proved energy efficiency;

7 “(ii) combined heat and power systems as
8 calculated under subparagraph (D);

9 “(iii) recycled energy; or

10 “(iv) in the case of distribution system
11 losses, upgraded distribution transformers, up-
12 graded electrical connectors, high temperature
13 superconductors, or other measures to reduce
14 such losses as specified in rules issued by the
15 Secretary.

16 “(C) The reductions in end-use electricity con-
17 sumption at a customer facility shall be reduced on
18 a Btu basis by the Btu equivalent of any associated
19 increases in fuel consumption at such facility. The
20 conversion of any such fuel consumption increase to
21 an equivalent amount of electricity on a Btu basis
22 shall be determined by the Secretary based on the
23 average heat rate of central station generation in the
24 region (accounting for average transmission and dis-

1 tribution losses in the region), as determined in
2 rules issued by the Secretary.

3 “(D) For a combined heat and power (CHP)
4 system, the electricity savings shall be the electricity
5 and mechanical power generated by the CHP system
6 net of fuel used by the system, where the fuel used
7 is the product of—

8 “(i) the electricity and mechanical power
9 generated by the CHP system;

10 “(ii) the net-effective heat rate for the
11 CHP system; and

12 “(iii) the inverse of the average heat rate
13 of central station generation in the region, tak-
14 ing into consideration avoided transmission and
15 distribution losses resulting from on-site gen-
16 eration as determined under subparagraph (C).

17 “(7) NATURAL GAS SAVINGS.—(A) The term
18 ‘natural gas savings’ means—

19 “(i) reductions in end-use natural gas con-
20 sumption achieved by a customer facility rel-
21 ative to—

22 “(I) consumption at the same facility
23 in a base year, as defined in rules issued
24 by the Secretary;

1 “(II) in the case of replacement of
2 equipment at the end of its life or of new
3 equipment that does not replace existing
4 equipment, consumption of new equipment
5 of average efficiency, as defined in rules
6 issued by the Secretary; or

7 “(III) in the case of a new facility,
8 consumption at a reference facility, as de-
9 fined in rules issued by the Secretary;

10 “(ii) reductions in leakage, operational
11 losses, and gas fuel consumption in the oper-
12 ation of a gas distribution system achieved by
13 a retail gas distributor relative to such losses in
14 a base year, as defined in rules issued by the
15 Secretary; or

16 “(iii) any combination of the foregoing.

17 “(B) The natural gas savings may be due to—

18 “(i) energy efficiency measures;

19 “(ii) recycled energy; or

20 “(iii) in the case of gas distribution system
21 losses, technologies and practices as specified in
22 rules issued by the Secretary including meas-
23 ures recommended for gas distribution systems
24 by the Natural Gas STAR Program adminis-
25 tered by the Environmental Protection Agency.

1 “(C) The reductions in natural gas consump-
2 tion shall be reduced on a Btu equivalent basis by
3 any associated increases in the consumption of elec-
4 tricity or other substitute fuels by a customer facility
5 or a natural gas distributor, as determined under
6 rules issued by the Secretary. The conversion of any
7 such increase in the consumption of electricity or
8 other fuels to an equivalent amount of natural gas
9 consumption on a Btu basis shall be determined by
10 the Secretary based on the average heat rate of cen-
11 tral station electric generation in the region and av-
12 erage transmission and distribution losses in the re-
13 gion, as determined under rules issued by the Sec-
14 retary.

15 “(8) NET EFFECTIVE HEAT RATE.—The term
16 ‘net effective heat rate’ means a ratio, the numer-
17 ator of which is the higher heating value of the in-
18 crement of fuel required by a CHP system to
19 produce electricity and mechanical power, over and
20 above the fuel that would be required to produce the
21 equivalent thermal output of the CHP system by a
22 system without power generation, expressed in Brit-
23 ish thermal units, and the denominator of which is
24 the power output of the CHP system, expressed in
25 kilowatt-hours.

1 “(9) PERFORMANCE STANDARD.—The term
2 ‘performance standard’ means the performance
3 standard for energy savings established under sub-
4 section (b).

5 “(10) RECYCLED ENERGY.—The term ‘recycled
6 energy’ means electrical or mechanical power, or
7 both, or thermal energy produced by modifying an
8 industrial or commercial system that was in place
9 prior to January 1, 2007, such that the modified
10 system—

11 “(A) recaptures energy that would other-
12 wise be wasted from sources, including—

13 “(i) waste heat from industrial proc-
14 esses, natural gas compressor stations, and
15 other sources;

16 “(ii) pressure in a fluid or gas system
17 including but not limited to steam, natural
18 gas, and water; and

19 “(iii) blast furnace, coke oven, carbon
20 black, and petrochemical process waste
21 gas, or pollution control projects, including
22 thermal oxidizers and gas flares; and

23 “(B) uses equipment and technologies in-
24 cluding—

1 “(i) back-pressure turbines in parallel
2 with existing pressure-reducing valves in
3 steam, water and gas systems;

4 “(ii) organic Rankine, Stirling, or
5 Kalina cycle heat engine systems driven by
6 waste heat; or

7 “(iii) heat recovery steam generators
8 with steam turbine generators that recover
9 waste heat.

10 “(11) RETAIL ELECTRICITY OR NATURAL GAS
11 DISTRIBUTOR.—The term ‘retail electricity or nat-
12 ural gas distributor’ means a person (including a
13 Federal, State, or local entity) that—

14 “(A) distributes electric energy or natural
15 gas to consumers in the United States for a cal-
16 endar year, including electricity or natural gas
17 supplied by unregulated suppliers, regardless of
18 whether such suppliers are affiliated or unaffili-
19 ated with the distributor; and

20 “(B) sold not less than 800,000 megawatt-
21 hours of electric energy or 1 billion cubic feet
22 of natural gas to consumers in the United
23 States for purposes other than resale during the
24 preceding calendar year.

1 For purposes of this paragraph, electricity or nat-
2 ural gas sold at wholesale to large end-use customers
3 shall be included but natural gas sold to wholesale
4 electric generators to generate electric power for re-
5 sale shall not be not included.

6 “(b) PERFORMANCE STANDARD.—

7 “(1) IN GENERAL.—Each retail electricity or
8 natural gas distributor shall undertake electricity
9 and natural gas savings measures in each calendar
10 year beginning with 2009 that produce electricity
11 and natural gas savings as a percentage of the dis-
12 tributor’s base quantity at the applicable rate speci-
13 fied in paragraph (5).

14 “(2) SAVINGS.—The savings described in para-
15 graph (1) shall represent savings realized in the
16 specified year from measures implemented in that
17 year and all preceding years beginning with 2007.

18 “(3) LIMITS.—Savings from combined heat and
19 power systems, recycled energy, and electricity or
20 natural gas distribution system measures may be
21 used by a distributor to satisfy no more than 50 per-
22 cent of the applicable savings specified for any year
23 in the table contained in paragraph (5).

24 “(4) COMPLIANCE.—(A) Each retail electricity
25 or natural gas distributor subject to this subsection

1 may use any electricity or natural gas savings meas-
2 ures available to the distributor to achieve compli-
3 ance with the performance standard established
4 under this section, on the condition that the elec-
5 tricity and natural gas savings achieved by such
6 measures are calculated and verified pursuant to the
7 rules issued under subsection (c).

8 “(B) A retail electricity or natural gas dis-
9 tributor may demonstrate compliance with the per-
10 formance standard through the accumulation of—

11 “(i) electricity or natural gas savings cred-
12 its achieved by such electricity or natural gas
13 distributor and certified under clause (i) of sub-
14 section (d)(2)(A);

15 “(ii) electricity or natural gas savings cred-
16 its obtained by purchase under subsection
17 (d)(6);

18 “(iii) electricity or natural gas savings
19 credits borrowed against future years under
20 subsection (d)(7); or

21 “(iv) any combination of credits described
22 in clauses (i), (ii), and (iii).

23 “(5) APPLICABLE RATES.—(A) The applicable
24 rates referred to in paragraph (1) are as follows:

“Year	Electricity Savings (%)	Natural Gas Savings (%)
2009	0.25	0.20
2010	0.75	0.50
2011	1.50	0.80
2012	2.25	1.15
2013	3.00	1.50
2014	4.00	2.00
2015	5.00	2.50
2016	6.00	3.00
2017	7.00	3.50
2018	8.00	4.00
2019	9.00	4.50
2020	10.00	5.00

1 “(B) At least 2 years before the beginning of
2 any year after 2020, the Secretary, after notice and
3 opportunity for comment, shall set the applicable
4 rate, taking into consideration the economic and en-
5 vironmental benefits of the energy savings and the
6 cost of the savings measures.

7 “(c) DETERMINATION OF COMPLIANCE RULES.—Not
8 later than 1 year after the date of enactment of this sec-
9 tion, the Secretary shall issue rules that describe the
10 means to be used to calculate and verify compliance with
11 the performance standard that include each of the fol-
12 lowing:

13 “(1) Procedures and standards for defining and
14 measuring electricity savings and natural gas sav-
15 ings from customer facility end-uses and from utility

1 distribution systems that occur in a calendar year
2 (including measures implemented in previous cal-
3 endar years beginning in 2007). At a minimum,
4 these procedures and standards shall—

5 “(A) specify the types and categories of ef-
6 ficiency measures that will be eligible for certifi-
7 cation under subsection (d)(2);

8 “(B) require that energy consumption esti-
9 mates for customer facilities or portions thereof
10 in the base and current years be adjusted, when
11 appropriate, to account for changes in weather,
12 level of production, and building area;

13 “(C) allow energy consumption estimates
14 from discrete processes and equipment within
15 industrial facilities in the base and current
16 years to be adjusted for factors identified by
17 rule that may be responsible for significant
18 year-to-year changes;

19 “(D) allow energy consumption estimates
20 from discrete processes and equipment within
21 industrial facilities in the base and current
22 years to be adjusted for factors identified by
23 rule that may be responsible for significant
24 year-to-year changes;

1 “(E) account for the useful life of energy
2 saving measures;

3 “(F) include deemed savings values for
4 commonly-used efficiency measures and make
5 provision for such values to be periodically re-
6 viewed and revised;

7 “(G) minimize the chances that more than
8 one entity will claim credit for the same sav-
9 ings; and

10 “(H) exclude savings that—

11 “(i) are attributable to measures or
12 systems installed before January 1, 2007,
13 or to modifications of processes or systems
14 undertaken prior to January 1, 2007;

15 “(ii) are otherwise required by Fed-
16 eral, State, local, or Indian tribal law or
17 regulation;

18 “(iii) are achieved without the inter-
19 vention of the electricity or natural gas dis-
20 tributor or of any other entity seeking
21 credits under paragraph (2)(A)(ii) of this
22 Act, except as provided under subsection
23 (e);

24 “(iv) are attributable to Federal,
25 State, or local tax incentives, grants, loans,

1 or other public financial support for energy
2 efficiency measures; or

3 “(v) have already been credited under
4 this section to another entity.

5 “(2) Procedures and standards for verification
6 of electricity or natural gas savings reported by re-
7 tail electricity and natural gas distributors. At a
8 minimum, such procedures and standards shall—

9 “(A) provide for periodic spot checks on a
10 sample of sites to verify that measures are in
11 place and functioning;

12 “(B) provide that savings estimates are
13 calibrated with billing analysis or end-use me-
14 tering on a sample of sites where technically
15 feasible and economically justified; and

16 “(C) provide for the protection of cus-
17 tomers’ proprietary information against unwar-
18 ranted disclosure.

19 “(3) Requirements for the content and format
20 of a biennial report from each retail electricity or
21 natural gas distributor demonstrating the compli-
22 ance of the distributor with the performance stand-
23 ard, including a detailed description of the calcula-
24 tion of electricity and natural gas savings to enable
25 the appropriate regulatory authority to verify and

1 enforce compliance with the requirements of this sec-
2 tion (including regulations issued under this sec-
3 tion).

4 “(4) Provision for reviewing and revising the
5 electricity and natural gas consumption of reference
6 facilities and of new equipment of average efficiency
7 at intervals of not greater than 4 years.

8 “(d) CREDIT AND TRADING SYSTEM.—

9 “(1) ESTABLISHMENT.—Not later than one
10 year after the date of enactment of this section, and
11 after consultation with the Administrator of the En-
12 vironmental Protection Agency, the Secretary shall
13 issue rules establishing a nationwide credit and cred-
14 it trading system for electricity and natural gas sav-
15 ings.

16 “(2) CREDITS.—

17 “(A) IN GENERAL.—In accordance with
18 the rules issued under paragraph (1), the Sec-
19 retary—

20 “(i) shall certify as credits, electricity
21 and natural gas savings achieved by a re-
22 tail electricity or natural gas distributor in
23 a given calendar year if the savings comply
24 with the rules issued under subsection
25 (c)(1);

1 “(ii) shall certify as credits, customer
2 electricity and natural gas savings under-
3 taken by State agencies and other entities
4 if—

5 “(I) a retail electricity or natural
6 gas distributor did not help finance
7 measures to achieve these savings;
8 and

9 “(II) the savings comply with the
10 rules issued under subsection (c); and

11 “(iii) shall not award credits to any
12 retail electricity or natural gas distributor
13 subject to State administration and en-
14 forcement under subsection (g) unless the
15 Secretary has determined that the adminis-
16 tration and enforcement are at least equiv-
17 alent to administration and enforcement by
18 the Secretary.

19 “(B) AMOUNT OF CREDITS.—A credit cer-
20 tified by the Secretary under this subsection—

21 “(i) shall equal 1,000 kilowatt-hours,
22 in the case of an electricity savings credit;
23 or

24 “(ii) shall equal 10 therms, in the
25 case of a natural gas savings credit.

1 “(3) TREATMENT OF CREDITS.—

2 “(A) USE OF CREDITS.—A credit may be
3 counted toward compliance with the perform-
4 ance standard only once.

5 “(B) PROPERTY RIGHTS.—An electricity or
6 natural gas savings credit certified under this
7 subsection shall not be considered to be a prop-
8 erty right.

9 “(C) REDUCTION AND TERMINATION OF
10 CREDITS.—Nothing in this section or any other
11 provision of the law limits the authority of the
12 United States to reduce or terminate a credit
13 certified under this subsection.

14 “(4) FEE.—

15 “(A) IN GENERAL.—To receive certifi-
16 cation of an electricity or natural gas savings
17 credit under this section, the recipient of the
18 credit shall pay a fee, calculated by the Sec-
19 retary, in an amount that is equal to the lesser
20 of the following:

21 “(i) The administrative costs of
22 issuing, recording, monitoring the sale or
23 exchange, and tracking, of the credit.

24 “(ii) For the years 2009 and 2010, 5
25 percent of the fair market value of the

1 credit, as determined by the Secretary, and
2 for the years 2011 and thereafter, 3 per-
3 cent of the fair market value of the credit,
4 as determined by the Secretary.

5 “(B) USE OF FEES BY SECRETARY.—Sub-
6 ject to annual appropriation, the Secretary shall
7 use amounts equivalent to the fees paid under
8 this paragraph to pay administrative costs de-
9 scribed in subparagraph (A)(i). If receipts ex-
10 ceed the administrative costs incurred by the
11 Secretary in any two consecutive fiscal years,
12 the Secretary shall, not later than January 1 of
13 the first fiscal year thereafter, reduce the fee
14 accordingly.

15 “(5) CREDIT SALE AND USE.—

16 “(A) SALE.—A retail electric or natural
17 gas distributor may sell a credit certified under
18 this subsection to any other entity, and other
19 entities may sell such credit to a retail electric
20 or natural gas distributor or any other entity,
21 in accordance with accounting and verification
22 procedures contained in rules issued by the Sec-
23 retary under paragraph (1).

24 “(B) USE.—A credit certified under this
25 subsection and sold under subparagraph (A)

1 may be used by a purchasing retail electricity
2 or natural gas distributor for purposes of com-
3 plying with the performance standard.

4 “(C) DURATION OF VALIDITY.—A credit
5 certified under this subsection may only be used
6 for compliance with this section for 3 years
7 from the date issued.

8 “(6) CREDIT BORROWING.—(A) During the
9 first year covered by the performance standard, a re-
10 tail electricity or natural gas distributor that has
11 reason to believe that the distributor will not have
12 sufficient electricity or natural gas savings credits to
13 comply with the performance standard may—

14 “(i) submit a plan to the Secretary
15 demonstrating that the retail electricity or
16 natural gas distributor will earn or acquire
17 sufficient credits within the subsequent 2
18 calendar years that would enable the retail
19 electricity or natural gas distributor to
20 meet the performance standard for all
21 three calendar years; and

22 “(ii) upon the approval of the plan by
23 the Secretary, apply credits expected to be
24 earned or acquired within the subsequent 2

1 calendar years to meet the performance
2 standard for the applicable calendar year.

3 “(B) Any retail electricity or natural gas dis-
4 tributor that has submitted such a plan shall, by
5 March 31 of the fourth calendar year, submit to the
6 Secretary the credits necessary to repay all credits
7 borrowed.

8 “(7) BUYOUT OPTION.—

9 “(A) IN GENERAL.—An electricity or nat-
10 ural gas distributor may elect to comply with
11 this section for any calendar year by paying to
12 the certified Electric and Natural Gas Savings
13 Corporation not later than March 31 of the fol-
14 lowing year, a fee of 5 cents per kilowatt-hour
15 or 50 cents per therm, for any portion of the
16 electricity or natural gas savings credit the dis-
17 tributor would otherwise be obligated to achieve
18 for the year.

19 “(B) USE OF BUYOUT FEES.—The Electric
20 and Natural Gas Savings Corporation shall—

21 “(i) deposit fees received under sub-
22 paragraph (A) in an escrow account estab-
23 lished by the Corporation; and

24 “(ii) periodically distribute amounts in
25 the escrow account to States requesting

1 such funds for use in creating electricity or
2 natural gas savings at customer facilities.
3 States requesting funds from the account estab-
4 lished by the Corporation shall submit specific
5 program proposals, including funds requested,
6 estimated savings and measure lifetime(s), and
7 estimated cost per kWh or therm saved. The
8 Corporation shall develop guidelines for these
9 submissions. The Corporation shall distribute
10 funds based on the following criteria: Estimated
11 savings per dollar of funds provided from the
12 escrow account, maximizing consumer opportu-
13 nities to participate across all States, and, be-
14 ginning in year 3, past history of each State in
15 meeting energy savings and cost-effectiveness
16 targets.

17 “(C) ELECTRIC AND NATURAL GAS SAV-
18 INGS CORPORATION.—

19 “(i) ESTABLISHMENT AND CERTIFI-
20 CATION.—Any person may submit an ap-
21 plication to the Secretary for the establish-
22 ment and certification of a not-for-profit
23 corporation, to be known as the Electric
24 and Natural Gas Savings Corporation, to
25 carry out this paragraph. The Secretary

1 shall certify the corporation if the Sec-
2 retary determines that the corporation has
3 submitted the most qualified application
4 indicating capability to carry out this para-
5 graph. The Secretary may revoke such cer-
6 tification at any time for good cause, and
7 in any such case, the Secretary may accept
8 applications from other persons and certify
9 another person as the Electric and Natural
10 Gas Savings Corporation.

11 “(ii) AUTHORITY OF CORPORATION.—
12 No person may distribute more than
13 800,000 megawatt-hours of electric energy
14 or more than 1 billion cubic feet of natural
15 gas to consumers in the United States for
16 purposes other than resale in any calendar
17 year, including electricity or natural gas
18 supplied by unregulated suppliers, regard-
19 less of whether such suppliers are affiliated
20 or unaffiliated with the distributor unless
21 such person complies with requirements es-
22 tablished by the Corporation for the pay-
23 ment of fees under this paragraph.

24 “(iii) STATUS OF CORPORATION.—The
25 Corporation shall not be treated as a de-

1 partment, agency, or instrumentality of the
2 United States for any purpose.

3 “(iv) BOOKS AND RECORDS.—The
4 books and records of the Corporation shall
5 be available to the public at reasonable
6 hours and under reasonable conditions,
7 without charge.

8 “(v) PENALTY.—Any person who vio-
9 lates clause (ii) of this subparagraph shall
10 be subject to a civil penalty to be assessed
11 and collected by the Secretary in the
12 amount equal to three times the total of
13 the fees which are due and payable to the
14 corporation under this paragraph.

15 “(e) ENFORCEMENT OF COMPLIANCE.—

16 “(1) IN GENERAL.—If a State regulatory au-
17 thority with jurisdiction over a retail electricity or
18 natural gas distributor notifies the Secretary that
19 the State regulatory authority will enforce compli-
20 ance by the distributor with the performance stand-
21 ard under this section, the State regulatory author-
22 ity shall have the authority to administer and en-
23 force the performance standard for the distributor
24 under State law.

1 “(2) AUTHORITY OF SECRETARY.—The Sec-
2 retary shall administer and enforce the performance
3 standard for all electricity and natural gas distribu-
4 tors for which a State regulatory authority described
5 in paragraph (1) has not notified the Secretary as
6 described in that paragraph.

7 “(3) COMPLIANCE REPORT.—Not later than
8 July 1, 2010, and every 2 years thereafter, each re-
9 tail electricity and natural gas distributor shall sub-
10 mit a compliance report conforming to the provisions
11 of the rule described in subsection (c)(3) to either—

12 “(A) the appropriate State regulatory au-
13 thority, if the authority has notified the Sec-
14 retary as described in paragraph (1); or

15 “(B) the Secretary.

16 “(4) FAILURE TO COMPLY.—

17 “(A) IN GENERAL.—In the case of any re-
18 tail electricity or natural gas distributor for
19 which the Secretary is enforcing compliance
20 with the standards under this section, if the
21 distributor fails to comply with the performance
22 standard for more than one calendar year, the
23 Secretary shall—

24 “(i) determine the number of kilowatt-
25 hours of electricity savings, or therms of

1 natural gas savings, by which the dis-
2 tributor has fallen short of meeting the
3 performance standard; and

4 “(ii) by order, require the distributor,
5 after notice and opportunity for hearing, to
6 deposit in the escrow account established
7 under paragraph (8)(B) of subsection (e)
8 an amount equal to 6.0 cents per kilowatt-
9 hour for each such kilowatt hour, and 60
10 cents per therm for each such therm.

11 “(B) JUDICIAL REVIEW OF ORDERS.—

12 “(i) IN GENERAL.—A retail electricity
13 or natural gas distributor ordered to make
14 a payment under subparagraph (A)(ii)
15 may, not later than 60 days after the date
16 of issuance of the order, bring a civil ac-
17 tion in the United States Court of Appeals
18 for the District of Columbia for judicial re-
19 view of the order.

20 “(ii) REMEDIES.—The court specified
21 in clause (i) shall have jurisdiction to enter
22 a judgment affirming, modifying, or set-
23 ting aside an order that is the subject of
24 a civil action brought under that clause, or

1 remanding the order, in whole or in part,
2 to the Secretary.

3 “(f) INFORMATION COLLECTION.—The Secretary
4 may collect any information necessary to verify and audit
5 each of the following:

6 “(1) The annual electric energy sales, natural
7 gas sales, electricity savings, and natural gas savings
8 of any entity applying for electricity or natural gas
9 savings credits under this section.

10 “(2) The validity of electricity or natural gas
11 savings credits submitted by a retail electricity or
12 natural gas distributor to the Secretary.

13 “(3) The quantity of electricity and natural gas
14 sales of all retail electricity and natural gas distribu-
15 tors.

16 “(g) STATE LAW.—

17 “(1) IN GENERAL.—Nothing in this section su-
18 persedes or otherwise affects any State or local law
19 or regulation requiring or otherwise relating to elec-
20 tricity or natural gas savings to the extent that the
21 State or local law or regulation contains more strin-
22 gent savings requirements or has different proce-
23 dures for buyout or penalties than those contained
24 in this section.

1 “(2) SITE-SPECIFIC SAVINGS.—A State may re-
2 quire the performance standard for electricity or
3 natural gas savings of any distributor within its ju-
4 risdiction to be achieved by measures undertaken—

5 “(A) within the State;

6 “(B) within the service territory of any re-
7 gional transmission organization serving the
8 State;

9 “(C) within any group of States partici-
10 pating in a regional program for the control of
11 green house gas emissions; or

12 “(D) within any airshed designated by the
13 State.

14 “(3) TREATMENT UNDER STATE LAW.—A retail
15 electricity or natural gas distributor that achieves
16 electricity or natural gas savings under this section
17 in accordance with any State or local savings re-
18 quirement specifically applicable to such distributor
19 shall be entitled to full credit under this section for
20 the savings to the extent that the savings meet the
21 requirements of this section (including regulations
22 issued under this section), including measurement,
23 verification, and monitoring requirements.

24 “(h) DEVELOPMENT OF MODEL PROVISIONS.—Not
25 later than 18 months after the date of enactment of this

1 section, the Federal Energy Regulatory Commission shall,
2 following public notice and comment, develop and publish
3 model provisions for adoption by State utility regulatory
4 commissions regarding each of the following:

5 “(1) REVENUE STABILITY AND INCENTIVES
6 FOR DISTRIBUTORS.—Policies for rate-setting and
7 return on investment for State-regulated electricity
8 and natural gas distributors that participate in suc-
9 cessful, cost-effective energy efficiency programs.
10 Such model language shall include provisions for de-
11 coupling the earnings of such regulated entities from
12 full dependence on the volume of electricity or nat-
13 ural gas distributed by them to customer facilities.
14 Such model language shall also include provisions
15 for policies for cost recovery and other financial in-
16 centives, such that electric and gas utility investors
17 are rewarded similarly for similar levels of invest-
18 ment in customer energy efficiency and in conven-
19 tional utility assets and that regulated utilities are
20 encouraged to include end-use efficiency measures
21 and utility-owned, customer-owned, or third party-
22 owned CHP systems in electric capacity and trans-
23 mission and distribution plans.

24 “(2) NONDISCRIMINATORY IDENTIFICATION OF
25 COST-EFFECTIVE SAVINGS OPPORTUNITIES.—Estab-

1 lishing a public, nondiscriminatory bidding process
2 open to customers and demand side management
3 service providers to identify cost-effective electricity
4 or natural gas savings opportunities within a retail
5 electricity or natural gas distributor's service area.
6 The model bidding plan shall provide for a dis-
7 tributor to procure all or a portion of its proposed
8 savings measures, including measures proposed by
9 the distributor or its affiliates, in cost-effective rank
10 order. The model plan shall also address the process
11 that will be used by the distributor to identify and
12 obtain further electricity or natural gas savings in
13 the event that insufficient savings are procured
14 through the bid process.

15 “(3) DEVELOPMENT OF MODEL LANGUAGE ON
16 REVENUE DECOUPLING AND SHAREHOLDER INCEN-
17 TIVES IN RATEMAKING POLICIES.—Rate-setting and
18 earnings for State-regulated electricity and natural
19 gas distributors that participate in successful, cost-
20 effective energy efficiency programs. Such model
21 language shall include, but not be limited to, rec-
22 ommendations for decoupling the earnings of such
23 regulated entities from full dependence on the vol-
24 ume of electricity or natural gas distributed by them
25 to customer facilities. Such model language shall

1 also include recommendations for policies for cost re-
2 covery and shareholder incentives, such that electric
3 and gas utility investors are rewarded similarly for
4 similar levels of investment in customer energy effi-
5 ciency and in conventional utility assets.

6 “(i) STATE ADOPTION OF FERC MODEL PROVI-
7 SIONS.—Each State utility regulatory authority shall
8 adopt the model provisions referred to in subsection (h)
9 in the same manner and subject to the same rules and
10 review as apply in the case of standards referred to in
11 section 113(b) and 303(b). For purposes of any provision
12 of title I or III of this Act, the model provisions referred
13 to in subsection (h) shall be treated as standards under
14 section 113(b) (in the case of State regulated electricity
15 distributors) or 303(b) (in the case of natural gas distribu-
16 tors), except that in the case of such model provisions,
17 any reference contained in this Act to the date of enact-
18 ment of this Act shall be deemed to be a reference to the
19 date of enactment of this section. Each such State utility
20 regulatory authority shall shall adopt the model provisions
21 not later than 24 months after the date of enactment of
22 this section in the case of paragraphs (1) and (2) of sub-
23 section (h) or 42 months after such date of enactment in
24 the case of paragraph (3) of subsection (h).”.

- 1 (b) TABLE OF CONTENTS.—The table of contents for
- 2 title VI of such Act is amended by adding the following
- 3 new items at the end thereof:

“Sec. 609. Rural and remote communities electrification grants.

“Sec. 610. Efficiency resource standard for retail electricity and natural gas distributors.”.

